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FEB 27 2007

Attorney Docket No. 40124/02301 (C 7408/HG)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Wood et al.  
Serial No. : 10/656,670  
Filed : September 5, 2003  
For : Fiber Material Having Improved Malodor Scavenger Properties  
Group Art Unit : 1771  
Confirmation No. : 1719  
Examiner : Jenna L. Davis

Mail Stop: AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

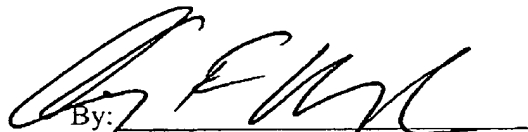
PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicants hereby request review of the final rejection in the above-identified application. No amendments are being filed with this Request. This Request is being filed with a Notice of Appeal. The review is requested for the reason(s) stated in the attached Pre-Appeal Brief.

The undersigned is an attorney of record and empowered to sign this Request.

Respectfully submitted,

Dated: February 27, 2007

By: 

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**PRE-APPEAL BRIEF**

In support of the Pre-Appeal Brief Request for Review filed herewith, Appellants present a pre-appeal brief in the above-captioned application.

This is a pre-appeal brief regarding the Examiner's final rejection of claims 1, 5, 7-18, and 22-26 in the Final Office Action dated November 30, 2006.

## ARGUMENTS

I. The Rejection of Claims 1, 5, 7-18, and 22-26 Under 35 U.S.C. § 103(a) as Unpatentable Over Ootani (JP 55-115440) in view of Trinh (U.S. Patent No. 5,429,628) Should be Reversed.

Claim 1 recites “dispersed within the fibers, an effective malodor scavenging amount of at least one of (i) particles of zinc, wherein the amount of particles of zinc in the fiber material is in a range from about 0.015 to 1 wt.-%, based on the fiber material, and wherein the particles of zinc are essentially free of corresponding oxides and the particles of zinc are nanosized particles having an average diameter in a range of 40 to 250 nm and (ii) a cyclodextrin material, wherein the cyclodextrin is free of an inclusion complex compound and the cyclodextrin comprises an  $\alpha$ -cyclodextrin, a  $\beta$ -cyclodextrin, a  $\gamma$ -cyclodextrin or mixtures thereof, having pendant moieties or substituents that render the cyclodextrin compatible with the fiber material, wherein the malodor scavenging amount is physically mixed into a batch to be manufactured into the fibers of the fiber material.” It is respectfully submitted that the Examiner has still not addressed the differences cited in the previous office actions.

The Applicants have previously stated that claim 1 differs from the compositions and articles disclosed in Trinh. Specifically, Trinh discloses adhering/attaching cyclodextrin to a fiber's surface as a coating after the fiber has been manufactured. (See Trinh, col. 21, ll. 11-13). More precisely, according to Trinh, the cyclodextrin is coated onto a hydrophobic fiber after the fiber is produced. As a consequence, Trinh does not disclose cyclodextrin physically mixed into the fibers. Those skilled in the art will understand that this process of manufacturing differs from that used in the present application. Accordingly, one main difference between the present invention and Trinh is the manner in which the cyclodextrin is introduced into or onto the fibers. In the present application, compatible cyclodextrin is dispersed into the fiber material before the fibers are produced, since “the malodor scavenging amount is physically mixed into a batch to be manufactured into the fibers of the fiber material,” as recited in claim 1. (See Specification, p. 19, ¶ [0068]).

The Examiner further admits that the particles of Trinh are not dispersed within each individual fiber. (See 11/30/06 Office Action, p. 2, l. 22 - p. 3, l. 1). Although the dispersion

within each individual fiber is an element of claim 1 of the present invention, the Examiner further asserts that since the particles of Trinh are “dispersed within the fibers as a group”, the disclosure of Trinh reads on claim 1. Even assuming that the particles of Trinh are “dispersed within the fibers as a group” (which the Applicants do not concede), it is respectfully submitted that the corresponding fiber material does not read on claim 1 of the present application. It is simply impossible to prepare a fiber material with cyclodextrin-coated fibers being bundled into groups by physically mixing cyclodextrin into a batch to be manufactured into the fibers of the fiber material. However, this is what claim 1 of the present application says. There is no doubt that cyclodextrin must be dispersed within each individual fiber in order to read on the language recited in claim 1.

The Applicants have also previously stated that claim 1 differs from the compositions and articles disclosed in Ootani. Specifically, Ootani discloses an acrylonitrile polymer that has a preferable range of zinc powder from 1 to 20% by weight. Ootani specifically discloses that a zinc powder of less than 0.1% by weight is insufficient for antifungal and antibacterial effects. That is, Ootani teaches away from the fiber material disclosed in the present application. Specifically, the fiber material of the present application may contain zinc particles as low as 0.015 wt% and still be effective, as recited in claim 1. (See Specification, p. 12, ¶ [0046]). The Examiner merely refers to Ootani disclosing zinc particles of a size less than one micron and never addressed the weight percentages of zinc. With reference to the size of the zinc particles, claim 1 recites “the particles of zinc [being] nanosized particles having an average diameter in a range of 40 to 250nm.” Ootani discloses that the zinc particles are contained in the acrylonitrile polymer at a particle size of “1 μm or less” (*i.e.*, 1,000nm or less). (See Ootani, p. 3). Furthermore, Ootani further specifies that a zinc particle size ranges from “about 0.5 to 2 μm” (*i.e.*, 500 to 2,000nm). (See Ootani, p. 5). Therefore, even if Ootani discloses that some of the zinc particles may be less than one micron (which the Applicants do not concede), they do not fall into the “nanosized particles having an average diameter in a range of 40 to 250nm,” as recited in claim 1. Finally, as set out in the previous submission, Ootani does not teach the use of zinc being essentially free of corresponding oxides.

Thus, it is respectfully submitted that neither Trinh nor Ootani, either alone or in combination, disclose or suggest “dispersed within the fibers, an effective malodor scavenging

amount of at least one of (i) particles of zinc, wherein the amount of particles of zinc in the fiber material is in a range from about 0.015 to 1 wt.-%, based on the fiber material, and wherein the particles of zinc are essentially free of corresponding oxides and the particles of zinc are nanosized particles having an average diameter in a range of 40 to 250 nm and (ii) a cyclodextrin material, wherein the cyclodextrin is free of an inclusion complex compound and the cyclodextrin comprises an  $\alpha$ -cyclodextrin, a  $\beta$ -cyclodextrin, a  $\gamma$ -cyclodextrin or mixtures thereof, having pendant moieties or substituents that render the cyclodextrin compatible with the fiber material, wherein the malodor scavenging amount is physically mixed into a batch to be manufactured into the fibers of the fiber material,” as recited in claim 1.

Accordingly, Applicants respectfully submit that claim 1 is allowable. Because claims 2-5 and 7-18 depend from and, therefore, include the limitations of claim 1, it is respectfully submitted that these claims are also allowable.

Claim 22 recites “[h]ygienic article comprising a fiber material according to claim 1.” Thus, Applicants respectfully submit that this claim is also allowable for at least the reasons stated above with reference to claim 1. Because claims 23-25 depend from and, therefore, include the limitations of claim 22, it is respectfully submitted that these claims are allowable as well.

II. The Rejection of Claims 12-16 Under 35 U.S.C. § 103(a) as Unpatentable Over Ootani in view of Trinh in further view of Wood et al. (U.S. Patent No. 5,776,842) Should be Reversed.

Claim 1 was recited and discussed above. Trinh and Ootani were discussed above. The Examiner states that Wood describes the modified cyclodextrins referred to in the present application and that it would have been obvious to a person having ordinary skill in the art at the time of the invention to use the moieties taught by Wood et. al. in the cyclodextrin of Trinh et. al. “in order to provide cyclodextrin material that can better interact with polymer and provide uniform dispersion on a substrate as taught by Wood” (See 11/30/06 Office Action, p. 4, l. 3-11). Wood discloses that a cyclodextrin barrier layer can be corrugated or sheet laminated with or on a cellulosic web. The cyclodextrin material can be included in a coating composition that is

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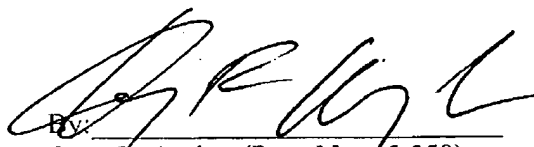
coated on the surface or both surfaces of the cellulosic web after web formation. (See Wood, abstract). That is, Wood does not disclose or suggest to physically mix cyclodextrin into a batch of thermoplastic material to be manufactured into fibers. It is to be noted that according to the present invention it is not contemplated to provide "uniform dispersion on a substrate". Thus, it is respectfully submitted that neither Trinh, Ootani, nor Wood discloses or suggests the above recitation of claim 1. Accordingly, because claims 12-16 depend from and, therefore, include all the limitations of claim 1, it is respectfully submitted that these claims are allowable for the above reasons.

### CONCLUSION

For the reasons set forth above, the Applicants respectfully request that the final rejections of claims 1, 5, 7-18, and 22-26 by the Examiner under 35 U.S.C. § 103 be reversed, and find that these claims are allowable.

Respectfully submitted,

Dated: February 27, 2007

  
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